

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND**

**WILLIAM OVERDEEP
VS**

**SELECT PORTFOLIO SERVICING, INC.,
WELLS FARGO BANK, NATIONAL ASSOCIATION
AS TRUSTEE FOR SABR 2004-OP1
MORTGAGE PASS THROUGH CERTIFICATES,
SERIES 2004-OP1, ALIAS**

**AFFIDAVIT IN SUPPORT OF MOTION FOR TEMPORARY
RESTRAINING ORDER AND PRELIMINARY INJUNCTION**

I, William Overdeep, being duly sworn, being duly sworn, state the following:

1. I am a resident of State of Rhode Island with an address of 1621 Old Smithfield Road, North Smithfield, Rhode Island. I reside and own said real estate located at 1621 Old Smithfield Road, North Smithfield, Rhode Island along with my wife, Cindy Overdeep. This property has an assessed value of \$393,200.00 by the Town of North Smithfield. As a result this property has equity of more than \$40,000.00.

2. We executed a mortgage to Option One Mortgage Corporation on November 19, 2003. A copy is attached as Exhibit A.

3. Orlans PLLC is a Michigan Limited Liability Company, which does business in Rhode Island as a debt collector.

4. Select Portfolio Servicing, Inc. ("SPS") is a foreign corporation. Its primary business purpose is the collection of debts for mortgagees. It is a loan servicer for the owner of our mortgage. It is a debt collector and it does not own our mortgage. At the time it commenced servicing of the mortgage loan, our mortgage loan account was delinquent.

5. Wells Fargo Bank National Association as Trustee for SABR 2004-OP1 Mortgage Pass-Through Certificates, Series 2004-OP1 (“Wells Fargo”) claims to own our note and mortgage. However this entity has never been assigned our mortgage or transferred my note. This entity does not exist under that name. There is a Trust with the name of Structured Asset Backed Receivables Trust 2004-OP1 as described in its Pooling and Servicing Agreement, which was filed at the Securities and Exchange Commission at the following web hyperlink:

https://www.sec.gov/Archives/edgar/data/1283459/000105640405001770/sab04op1_2004.txt

6. This Pooling and Servicing agreement describes the chain of title of all mortgages, which were transferred into the Trust solely by Structured Asset Backed Receivables, LLC.

7. As indicated by Exhibit B, attached to this Affidavit, my promissory note was lost. This affidavit of lost note was mailed to my attorney by the previous loan servicer, Ocwen Loan Servicer. In this lost note affidavit, dated March 29, 2007 Option One Mortgage Corporation, the originator of the loan stated that my mortgage note had been lost.

8. My attorney received this lost note affidavit from the previous loan servicer, Ocwen Loan Servicing, LLC in March 2015.

9. Wells Fargo has not been assigned the mortgage from Option One Mortgage Corporation or any entity which owned the mortgage and the note.

10. The alleged assignment was from Sand Canyon Corporation to Wells Fargo Bank, N.A. as Trustee for SABR Trust 2004-OP1, Mortgage Pass-Through Certificates, Series 2004-OP1. It was dated April 18, 2012. A copy is attached as Exhibit C.

11. This purported assignment of mortgage was void due to the fact that Option One did not own my mortgage on April 18, 2012.

12. On March 18, 2009, an affidavit was filed in the United States Bankruptcy Court for the Eastern District of Louisiana in case number 07-11862. A copy is attached as Exhibit D.

13. This affidavit was signed by Dale Sugimoto, President of Sand Canyon.

14. In this affidavit, dated March 18, 2009, Dale Sugimoto declared:

5. Accordingly, Sand Canyon is no longer engaged in the servicing of residential mortgage loans . . .

6. San Canyon also does not own any residential real estate mortgages.

7. Sand Canyon's present business involves dealing with litigation claims, including title issues or litigation relating to servicing prior to the sale of OOMC's servicing rights to AHMC.

15. On April 18, 2012, the date of the alleged assignment, neither Sand Canyon nor Option One owned any mortgage loans.

16. Orlans PLLC, on behalf of SPS and Wells Fargo has scheduled a foreclosure sale for my home on February 5, 2018 at 10:00 AM, a copy of which is attached as Exhibit E.

17. We have applied for several loan modifications. We have been advised that this trust does not provide any loan modifications. However we obtained documents which indicate that this Trust has regularly provided loan modifications.

18. On January 26, 2015 Ocwen, the prior servicer advised me that the Owner of your loan does not allow loan modifications. It also stated that:

According to our records, Wells Fargo Bank Corporate Trust Services is the owner of your loan.

18. A copy of this letter is attached as Exhibit F.

19. I reside at 1621 Old Smithfield Road, North Smithfield, Rhode Island with my wife and six special needs foster children.

20. I have a substantial likelihood of success in the pending action, would otherwise suffer irreparable harm and can claim the greater hardship

in the absence of an order, which will not disserve the public interest if imposed.

21. The lack of an assignment of the mortgage to Wells Fargo, the lost note and the inability of Wells Fargo or SPS to accelerate the mortgage due to the lost note and the purported ownership of this loan by Wewlls Fargo Bank Corporate Trust Services renders void any attempt to commence the alleged foreclosure by Statutory Power of Sale. This demonstrates that I have a substantial likelihood of success.

22. These facts demonstrate that I have a substantial likelihood of success. Likewise a foreclosure of my property by a party not entitled to foreclose on the property will cause me irreparable harm, which hardship is greater than any hardship, which may be claimed by defendants. Since this property has equity of at least \$40,000.00, no harm will befall Defendants if this injunctive relief is granted.

23. Such relief sought by me will not disserve the public interest if imposed.

24. I am requesting that this Court Temporarily Restrain and Enjoin and Preliminarily Restrain and Enjoin SPS, Wells Fargo and any other entity acting on their behalf from conducting or continuing or advertising a foreclosure sale on February 5, 2018 or at any other time until further Order of this Court.


WILLIAM OVERDEEP

STATE OF RHODE ISLAND
COUNTY OF PROVIDENCE

Subscribed and sworn before me on the 2d day of February, 2018.


NOTARY PUBLIC

